



FRANK G. COUSINS, JR.
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Essex County Correctional Facility & Sheriff's Headquarters

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George LeVines
MuckRock News
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RE: Freedom of Information Request

Dear Mr. LeVines:

I am writing in response to your email correspondence to Maurice Pratt of the Essex County Sheriff's Department dated April 30, 2013. I serve as Assistant Legal Counsel to Sheriff Frank G. Cousins, Jr. and the Essex County Sheriff's Department. Without waiving any rights, objections or defenses, all of which are expressly reserved in full, the Department responds as follows.

You have made a public records request for any lists, databases and inventory rosters containing equipment used by the Department in the field of duty, including but not limited to "firearms, protective gear, surveillance equipment, tactical and defense equipment, vehicles, etc." At the outset, the Department objects to your request on the grounds that it is vague, ambiguous, overly broad, not limited in time and fails to reasonably describe the records sought in order for the Department to properly respond. Moreover, for reasons more fully articulated below, it is the Department's position that the documents in question are exempt from disclosure pursuant to M.G.L. c. 4, S. 7(26)(b), (f) and (n).

M.G.L. c. 4, S. 7(26)(b)

The records in question are exempt from disclosure pursuant to M.G.L. c. 4, S. 7(26)(b), which addresses materials "related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding." Significantly, the context in question is a secure correctional facility where members of the public have restricted access, and where the Department's primary mission is the safety and security of inmates, correctional staff and the public at large. The records in question include information regarding among other things, information and policies with respect to firearms, tactical and protective equipment, and surveillance equipment utilized by the Department to maintaining order and provide for the security of the institution. In addition, the information in

question would reveal the investigatory and security resources available to and utilized by the Department in carrying out and upholding its very mission, the disclosure of which would significantly impair the proper performance of necessary government functions of the Department. Requiring the disclosure of such information would, in essence, disclose the Department's playbook to the public and circumvent the very practices, procedures and mechanisms put in place by the Department to maintain order and provide for the security of the institution.

That being the case, courts have consistently given deference to jail administrators in their decision making and implementation of policies, procedures and practices designed to ensure the safety, security and orderly running of the facility, noting that "law enforcement agencies, as paramilitary organizations, have been recognized as qualitatively different from other governmental branches." Wagner v. City of Holyoke, 241 F.Supp.2d 78, 91 (D.Mass.2003); Curran v. Cousins, 482 F.Supp.2d 36, (2007). Courts have repeatedly noted that "[p]rison administrators should be accorded wide latitude in creating policies and regulations that in their judgment are necessary to preserve internal order and discipline." Collins v. Mass. D.O.C., 1995 WL 542517, (1995).

In light of the foregoing, the Secretary of State's Office has recognized the significance of limiting access to prison records, noting

One of the Department's primary functions is to maintain secure penal institutions. Information regarding the procedures used by correctional officers during law enforcement efforts relates solely to the internal workings of the Department. Moreover, disclosure of this information could prove detrimental to the Department's law enforcement efforts, as knowledge of the Department's security response procedures could enable an inmate to circumvent such procedures.

"A Guide to the Massachusetts Public Records Law, William Galvin, Secretary of the Commonwealth, publisher, 10-11 (2008). The requested records are therefore exempt from disclosure pursuant to S. 7(26)(b).

M.G.L. c. 4, S. 7(26)(f)

M.G.L. c. 4, S. 7(26)(f) exempts from disclosure "investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest." In the present case, the materials in question would include surveillance and other tactical equipment utilized by the Department not just in the field of duty, but in its internal investigations. Particularly in the law enforcement setting, courts have recognized that the investigatory exemption's purpose is, among other things, preventing the disclosure of confidential investigative techniques, procedures, or sources of information, and the encouragement of witnesses to come forward and speak freely and candidly concerning matters under investigation. Bougas v. Chief of Police of Lexington, 371 Mass. 59, 62 (1976); Globe Newspaper Co. v. Police Commr. of Boston, 648

N.E.2d 419 (1995). To do otherwise would permit inmates and the public at large to look inside a confidential investigation, potentially disclosing things such as tactical protocol, equipment and deployments, as well as investigative techniques and resources. In short, the Department has a significant interest in ensuring that all such information, remain confidential.

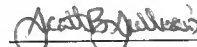
M.G.L. c. 4, S. 7(26)(n)

M.G.L. c. 4, S. 7(26)(n) relates to “records, including, but not limited to plans, policies, procedures...which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities...transportation...the disclosure of which...is likely to jeopardize public safety.” Given the context in question, a medium security correctional facility, as well as the very mission of the Department – the care, custody and control of the inmate population and protection of staff and the general public - as discussed above, the requested materials are independently exempt pursuant to S. 7(26)(n).

Please be advised that while it is the Department’s position that the materials in question are exempt from disclosure for the reasons detailed above, in the event the records are found to be subject to disclosure by an independent entity in the future, the Department reserves its right to first provide you with a written, good faith estimate of the minimum cost to be incurred by it for the search and segregation time in complying with your request in the future.

Thank you for your attention to this matter.

Very truly yours,



Scott B. Sullivan